

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

UNITED STATES OF AMERICA	§	
	§	
vs.	§	CASE NO. 2:94cr3-1 (DF-CE)
	§	
CEDRIC JAMES	§	

REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE

On October 6, 2009, the undersigned held a final hearing on the government's amended petition (#48) to revoke supervised release. The government was represented by Assistant United States Attorney Mr. Allen Hurst. The defendant, Cedric James, was represented by Mr. Eric Albritton.

Cedric James was sentenced on November 1, 1995, before The Honorable U.S. District Judge David Folsom of the Eastern District of Texas – Marshall Division, after pleading guilty to the offense of Felon in Possession of a Firearm, a Class C felony. This offense carried a statutory maximum imprisonment term of not more than 10 years. The guideline imprisonment range, based on a total offense level of 28 and a criminal history category of IV, was 110 to 120 months. Cedric James was subsequently sentenced to 110 months to be followed by three (3) years of supervised release subject to the standard conditions of release. On November 1, 1995, Judge Folsom signed an Amended Judgment and Commitment which modified the judgment to include a special condition that the defendant shall participate in a mental health treatment program. On February 22, 2008, Cedric James completed his period of imprisonment and began service of the supervision term.

On May 1, 2008, Judge Folsom modified Mr. James' conditions of supervised release to require the defendant's participation in a program of testing and treatment for drug abuse, under the guidance and direction of the U.S. Probation Office, until such time that the defendant was released

from the program by the probation officer.

On September 24, 2009, the instant amended petition to revoke was filed. In its petition, the government alleges the defendant violated the following conditions:

1) Mandatory: The defendant shall not commit another federal, state, or local crime. Specifically, the government alleges as follows: On December 11, 2008, Mr. James was found not guilty by a jury in Harrison County Court, Marshall, Texas of the offense of Attempting to Take a Weapon from a Peace Officer.

2) Mandatory: The defendant shall not commit another federal, state, or local crime. Specifically, the government alleges as follows: On January 27, 2009, Mr. James was found guilty by a jury in Harrison County Court, Marshall, Texas of the offense of Possession of Marijuana, and sentenced to 180 days imprisonment.

3) Mandatory: The defendant shall not commit another federal, state, or local crime. Specifically, the government alleges as follows: On February 24, 2009, Mr. James was found guilty by a jury in Harrison County Court, Marshall, Texas of the offense of Failure of Operator Duty on Striking Unattended Vehicle, and sentenced to 180 days imprisonment.

4) Mandatory: The defendant shall refrain from any unlawful use of a controlled substance. Specifically, the government alleges as follows: On April 17, 2008, Mr. James submitted a urine sample in a testcup. The specimen tested positive for marijuana. On this same date, he admitted to using marijuana approximately two weeks prior to this date.

5) Mandatory: The defendant shall not commit another federal, state, or local crime. Specifically, the government alleges as follows: On April 29, 2009, Mr. James was found guilty by a jury in Harrison County Court, Marshall, Texas for the offense of Assault, and sentenced to 365

days imprisonment.

6) Mandatory: The defendant shall not commit another federal, state, or local crime. Specifically, the government alleges as follows: On July 22, 2009, Mr. James was arrested by the Texas Department of Public Safety in Marshall, Texas, and charged with Driving While Intoxicated and Failure to Stop and Render Aid. This case remains pending.

7) Mandatory: The defendant shall not commit another federal, state, or local crime. Specifically, the government alleges as follows: On August 20, 2009, Mr. James was indicted by the Grand Jury in Marshall, Texas, District Court for the offense of Indecency with a Child Sexual Assault. On August 31, 2009, he was arrested by the Marshall Police Department for this charge and it remains pending.

The court scheduled a final revocation hearing for October 6, 2009. At the hearing on the government's petition, and after consenting to the undersigned taking the plea, the defendant pled true to the second and fourth allegations as set forth above. The government abandoned the remaining allegations. Based on the defendant's plea of true to the second and fourth allegations, and with no objection by the defendant or the government, the undersigned found that the defendant did violate the second and fourth conditions of his supervised release, as alleged in the U.S. Probation Office's amended petition.

The undersigned thereafter recommended that the defendant be committed to the custody of the Bureau of Prisons to be imprisoned for eight months, to run concurrently with any sentence the defendant may receive in the state court action, with no term of supervised release to follow. Based on the foregoing, it is

RECOMMENDED that the defendant's plea of true to the second and fourth allegations,

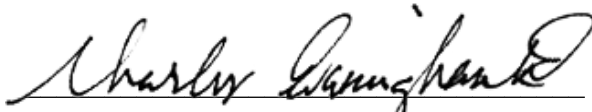
as set forth in the government's petition, be **ACCEPTED**. Based upon the defendant's plea of true to the second and fourth allegations, it is further recommended that the court find that the defendant violated the conditions of his supervised release. It is further

RECOMMENDED that the defendant's supervised release be **REVOKED**. It is further

RECOMMENDED that the defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of eight months, to run concurrently with any sentence the defendant may receive in the state court action, with no term of supervised release to follow such term of imprisonment.

At the close of the October 6, 2009 revocation hearing, defendant, defense counsel, and counsel for the government each signed a standard form waiving their right to object to the proposed findings and recommendations contained in this report, consenting to revocation of supervised release as recommended herein, and consenting to the imposition of the above sentence recommended in this report. Defendant also waived his right to be present and speak before the district judge imposes the recommended sentence. Therefore, the court may act on the report and recommendation immediately.

SIGNED this 8th day of October, 2009.


CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE